



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

N\$2.00

WINDHOEK - 18 November 2002

No.2857

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## Proclamation

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by the

**PRESIDENT OF THE REPUBLIC OF NAMIBIA**

No. 7

2002

**COMMISSION OF INQUIRY INTO THE ACTIVITIES, AFFAIRS,  
MANAGEMENT AND OPERATION OF THE SOCIAL SECURITY COMMISSION  
ESTABLISHED BY SECTION 3(1) OF THE SOCIAL SECURITY ACT, 1994 (ACT  
NO. 34 OF 1994)**

Under the powers vested in me by section 1 of the Commissions Act, 1947 (Act No. 8 of 1947), I -

- (a) declare the provisions of the Commissions Act, 1947 to be applicable with reference to the Commission of Inquiry into the Activities, Affairs, Management and Operations of the Social Security Commission established by section 3(1) of the Social Security Act, 1994 (Act No. 34 of 1994) appointed by me, the appointment and terms of reference of which was made known by Government Notice No. 200 of 2002; and

- (b) make the regulations set out in the Schedule to this Proclamation with reference to the said Commission.

Given under my Hand and the Seal of the Republic of Namibia at Windhoek, this 24th day of October Two Thousand and Two.

**S. NUJOMA**  
**PRESIDENT**  
**BY ORDER OF THE PRESIDENT-IN-CABINET**

#### **SCHEDULE**

1. In these regulations, unless the context otherwise indicates -

“Chairperson” means the Chairperson of the Commission;

“Commission” means the Commission of Inquiry into the Activities, Affairs, Management and Operation of the Social Security Commission established by section 3(1) of the Social Security Act, 1994 (Act No. 34 of 1994);

“document” includes any book, register, correspondence, pamphlet, note, record (including any tape or other mechanical recording of anything or any transcription of any such notice, record, tape or other mechanical recording), list, circular, plan, placard, poster, publication, drawing, photograph or picture;

“financial institution” means -

- (a) any banking institution registered under the Banking Institutions Act, 1998 (Act No. 2 of 1998);
- (b) any building society registered under the Building Societies Act, 1986 (Act No. 2 of 1986);
- (c) any registered insurer, insurance agent or insurance broker as defined in section 1 of the Short-term Insurance Act, 1998 (Act No. 4 1998); or
- (d) any registered insurer, insurance agent or insurance broker as defined in section 1 of the Long-term Insurance Act, 1998 (Act No. 5 of 1998);

“inquiry” means the inquiry conducted by the Commission in the execution of its terms of reference;

“premises” includes any land, building, structure, or any part of any building or structure or any vehicle, vessel, aircraft, or other means of transport;

“staff member” means any person designated under regulation 2 to assist the Commission;

“terms of reference” means the terms of reference of the Commission as set out in Government Notice No. 200 of 2002.

2. (1) The administrative functions of the Commission shall be performed by staff members in the public service assigned for that purpose by the Permanent Secretary: Ministry of Labour, one of whom shall be assigned to act as Secretary to the Commission.

(2) The Secretary and other staff members referred to in subregulation (1) shall perform their duties subject to the control and direction of the Commission.

3. The Commission may, on such terms and conditions as the Minister of Labour may approve -

- (a) appoint any person to assist the Commission in or in connection with the execution of its inquiry;
- (b) designate one or more persons to be present at the inquiry and to present evidence and arguments which have a bearing on the inquiry and to cross-examine witnesses appearing before the Commission, subject to regulation 10.

4. The Chairperson shall determine the procedure to be following at any proceedings of the Commission.

5. All sittings of the Commission shall be held at such times and places as may be determined by the Commission.

6. Written submissions to the Commission shall -

- (a) be prepared in the official language, if possible, or in any other language approved by the Secretary to the Commission;
- (b) if and where possible be typewritten or word-processed on A4-size paper;
- (c) bear the name, address and telephone or fax number and e-mail address of the author; and
- (d) be submitted in tenfold.

7. No shorthand notes or mechanical records of the proceedings of the Commission shall be transcribed except by order of the Chairperson.

8. (1) Every person employed for, or assisting with, the performance of the functions of the Commission, including a person employed to transcribe the proceedings of the Commission, shall preserve and aid in preserving secrecy with regard to the functions, proceedings and documents of the Commission and any matter or information which may come to his or her knowledge in the performance of his or her duties in connection with the said functions, except in so far as disclosure of such proceedings, documents, matter or information is necessary for the purposes of the Commission's report, a criminal investigation or prosecution, or is required in terms of an order of a competent court.

(2) Every person referred to in subregulation (1), except a member of the Commission shall at the outset take an oath or make an affirmation of fidelity and secrecy before the Chairperson, or a staff member authorised thereto by the Chairperson, in a form to be determined by the Commission.

(3) No person shall, except in so far as it may be necessary in the execution of the Commission's terms of reference, for the purposes of a criminal investigation or prosecution, or in terms of an order of a competent court, publish or furnish or communicate to any person the report of the Commission or a copy or any part thereof or an extract therefrom or any finding, recommendation or information contained therein, unless and until the President has made the report available for publication.

9. (1) Without limitation of the power conferred by section 3 of the Act, the Commission may, in accordance with that section, cause any director, manager or other employee of a financial institution to be summoned -

- (a) to produce any record, account or other document belonging to or in the possession, custody or control of the financial institution, including computer data or printouts or any other electronic medium by which information or

data is stored and which relates to any person contemplated in paragraph 1(a), (b), (c) or (d) of the Commission's terms of reference; and

- (b) to provide any information related to any record, account, document or article referred to in paragraph (a).

(2) A director, manager or employee of a financial institution referred to in subregulation (1) must, upon a request by the Commission, produce any document referred to in that subregulation and provide any requested information in relation thereto notwithstanding any duty of secrecy or other restriction on disclosure imposed by any law, agreement or otherwise.

**10.** (1) No person, other than a member of the Commission or a person designated under regulation 3(b), nor the legal representative of any person, shall have the right to cross-examine any witness appearing before the Commission, unless the Chairperson permits such cross-examination because the Chairperson deems it necessary in the interests of the inquiry.

(2) The Chairperson may, when he or she permits the cross-examination of any witness in terms of subregulation (1), limit such cross-examination to the subjects and in the manner which he or she deems necessary in the interests of the inquiry.

**11.** Any witness appearing before the Commission may, in the discretion of the Chairperson and in the manner determined by him or her, be assisted by a legal practitioner, or by any person, including, if he or she so desires, a person designated by the Permanent Secretary: Ministry of Labour for that purpose.

**12.** In any proceedings before the Commission the Chairperson of the Commission shall not be bound by the rules of law relating to the admissibility of evidence.

**13.** If, at the time of any person giving evidence before the Commission, members of the general public are or have been excluded from attendance at the proceedings of the Commission, the Chairperson may, on the request of such person, direct that no person shall disclose in any manner whatsoever the name or address of that person or any information likely to reveal his or her identity.

**14.** (1) Any member of the Commission or staff member authorised thereto in writing by the Commission, may at any reasonable time, for the purpose of the inquiry -

- (a) enter any premises and carry out any investigation which he or she deems necessary; and
- (b) demand, inspect, seize, or take copies of, or make extracts from any book, account or document found on such premises and which such member or staff member, believes may have a bearing on any matter relating to the inquiry.

(2) Without prejudice to the generality of the power conferred by subregulation (1), a member or a staff member referred to in that subregulation may, in the exercise of the power conferred by the subregulation, demand from any director or the manager or any other employee of any financial institution -

- (a) the disclosure and inspection of any record, account or other document belonging to or in the possession, custody or control of the financial institution, including computer data or printouts or any other electronic medium by which information or data is stored and which relates to any person contemplated in paragraph 1(a), (b), (c) or (d) of the Commission's terms of reference; and

(b) any information related to any record, account, document or article referred to in paragraph (a).

(3) A director, manager or employee of a financial institution referred to in subregulation (2) must comply with a demand made by a member or staff member under that subregulation notwithstanding any duty of secrecy or other restriction on disclosure imposed by any law, agreement or otherwise.

(4) A member of the Commission or a staff member must, when exercising the power conferred by this regulation, show the written authorisation referred to in subregulation (1) to any person in relation to whom the power is exercised and who requires proof of such authorisation.

15. No person shall insult, disparage or belittle the Chairperson or any other member of the Commission or prejudice, influence or anticipate the proceedings or findings of the Commission.

16. Any person who contravenes or fails to comply with -

(a) regulation 7 or 8, or any order of the Chairperson made thereunder; or

(b) regulation 15,

shall be guilty of an offence and liable on conviction -

(i) in the case of an offence referred to in paragraph (a), to a fine not exceeding N\$200 or imprisonment for a period not exceeding six months; and

(ii) in the case of an offence referred to in paragraph (b), to a fine not exceeding N\$1000 or imprisonment for a period not exceeding one year.

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## Government Notice

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### OFFICE OF THE PRESIDENT OF THE REPUBLIC OF NAMIBIA

No. 200

2002

#### APPOINTMENT OF COMMISSION OF INQUIRY INTO THE ACTIVITIES, AFFAIRS, MANAGEMENT AND OPERATION OF THE SOCIAL SECURITY COMMISSION, ESTABLISHED BY SECTION 3 OF THE SOCIAL SECURITY ACT, 1994 (ACT NO. 34 OF 1994)

It is hereby notified for general information that His Excellency Dr. Sam Nujoma, President of the Republic of Namibia, has appointed a Commission of Inquiry into the Activities, Affairs, Management and Operation of the Social Security Commission established by section 3 of the Social Security Act, 1994 (Act No. 34 of 1994), consisting of the following members -

Mr Bro - . Matthew Shinguadja, who is the Chairperson;

Mr John Nauta;

Mr Deon Obbes; and

Mr Dirk J Kotze.

The Chairperson may also, in consultation with the Minister of Labour, co-opt additional persons from time to time to assist the Commission in an advisory capacity in the performance of its assigned tasks.

The terms of reference of the Commissions are as follows:

1. To inquire and report generally upon allegations as to irregularity, malpractice and illegality pertaining to the activities, affairs, management and operation of the Social Security Commission since its establishment and, more particularly, but without derogating from the generality of the aforesaid, to inquire and report upon:
  - (a) unlawful, irregular and/or undue payments made to and received by former members of the Social Security Commission appointed in terms of section 4 (1) of the Social Security Act, 1994 who served on the Commission before 1 October 2002 and/or relatives or associates of the said members;
  - (b) unlawful, irregular and/or undue payments made to and received by the executive officer of the Social Security Commission appointed in terms of section 12(1) of the Social Security Act (herein referred to as "*the executive officer*") and/or relatives or associates of the said executive officer;
  - (c) unlawful, irregular and/or undue payments made to and received by employees or former employees of the Social Security Commission and/or relatives or associates of the said employees;
  - (d) unlawful, irregular and/or undue commissions received by persons engaged to render services to the Social Security Commission, *inter alia* as consultants and investment brokers and/or relatives or associates of such persons, as a result of the services so rendered or of the investment of funds of the Social Security Commission with insurance companies or other financial institutions;
  - (e) compliance by the former members of the Social Security Commission referred to in paragraph (a) with the provisions of the Social Security Act, 1994 (including regulations promulgated thereunder) and established policies and procedures of the Social Security Commission;
  - (f) compliance by the executive officer with the provisions of the Social Security Act, 1994 (including regulations promulgated thereunder), and established policies and procedures of the Social Security Commission;
  - (g) compliance by the employees and former employees of the Social Security Commission with the provisions of the Social Security Act, 1994 (including regulations promulgated thereunder), and established policies and procedures of the Social Security Commission;
  - (h) the extent to which former members of the Social Security Commission referred to in paragraph (a), the executive officer and employees and former employees of the Social Security Commission improperly benefited from the procurement by the Social Security Commission of goods and services;
  - (i) the extent to which former members of the Social Security Commission referred to in paragraph (a), the executive officer and employees and former employees engaged in executive management within the Commission, discharged their functions in providing and ensuring effective monitoring and control over the assets of the Social Security Commission, adherence to the provisions of the Social Security Act, 1994 and established policies and procedures;
  - (j) the overall financial management of the Social Security Commission.
2. To report to the Minister of Labour on its findings and make relevant recommendations as it may deem necessary in light of the findings.

The Commission shall submit a first interim report on the terms of reference within 3 (three) months of the date of appointment of the Commission and its final report within

2 (two) months of that date or such further period as the President may, at the request of the Commission, determine.

Interested persons wishing to submit written representations to or give evidence before the Commission are requested and required to send or submit, in the manner prescribed in the regulations set out in the Schedule to Proclamation No. 7 of 2002, written submissions in which those representations or a summary of that evidence is set out, to

The Secretary,  
2950 Borgward Street  
Commissioners Building  
Private Bag 13367  
Khomasdal, Windhoek  
Tel. No: (061) 210531/211130/210531  
Facsimile at (061) 212334

OR

The Secretary,  
Commission of Inquiry: Social Security Commission,  
c/o The Permanent Secretary: Ministry of Labour,  
P.O. Box 19005,  
Windhoek,  
32 Mercedes Street,  
Khomasdal, Windhoek,  
Tel. No: (061) 2066111  
Facsimile at (061) 252463.

The deadline for the aforesaid submissions is 15 January 2003, but the Commission may, in appropriate cases, accept and entertain representations received after that date.

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